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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

SAN FRANCISCO TECHNOLOGY, INC.

Case No. C10-05210 PJH

Plaintiff,

**DEFENDANT FRANKLIN SPORTS,  
INC.'S LOCAL RULE 7-3(D)  
STATEMENT OF RECENT DECISION IN  
SUPPORT OF MOTION TO DISMISS**

vs.

FRANKLIN SPORTS, INC.

Defendant.

Judge: Hon. Phyllis J. Hamilton  
Date: March 23, 2011  
Time: 9:00 a.m.  
Courtroom: Courtroom 3, 3rd Floor

1                   Defendant Franklin Sports, Inc. (“Franklin”) respectfully submits, pursuant to Northern  
2 District of California Civil Local Rule 7-3(d), this Statement of Recent Decision in support of  
3 Defendant’s Motion to Dismiss Pursuant to Rules 12(b)(6) and 9(b) and in the Alternative to  
4 Transfer Venue.

5                   On March 15, 2011, the Federal Circuit issued a writ of mandamus (attached hereto as  
6 Exhibit A) in the case of In re BP Lubricants USA Inc., holding “that Rule 9(b)’s particularity  
7 requirement applies to false marking claims and that a complaint alleging false marking is  
8 insufficient when it only asserts conclusory allegations that a defendant is a ‘sophisticated  
9 company’ and ‘knew or should have known’ that the patent expired.” No. 2010-M960, slip op.,  
10 at 2 (Fed. Cir. Mar. 15, 2011). The Federal Circuit accordingly ordered dismissal of the case.

11  
12 Dated: March 15, 2011

WOLF, GREENFIELD & SACKS, P.C.

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14 By: /s/ Gerald B. Hrycyszyn  
15 Gerald B. Hrycyszyn  
Michael A. Albert

16                   Attorneys for Defendant  
17                   FRANKLIN SPORTS, INC.

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**CERTIFICATE OF SERVICE**

I am employed in the County of Suffolk, State of Massachusetts. I am over the age of 18 and not a party to this action. My business address is WOLF, GREENFIELD & SACKS, P.C., 600 Atlantic Avenue, Boston, MA 02210-2206.

Pursuant to Civil L.R. 5-5 and 5-6, I hereby certify that on March 15, 2011, I caused service of a true and correct copy of the following document:

**DEFENDANT FRANKLIN SPORTS, INC.'S STATEMENT OF RECENT DECISION IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULES 12(b)(6) AND 9(b) AND IN THE ALTERNATIVE TO TRANSFER VENUE**

to be made in the manner described below.

By electronic filing with the Clerk of the Court using the CMECF System, which will send a Notice of Electronic Filing to all counsel of record who have filed a Notice of Consent to Electronic Service in this action.

**COUNSEL FOR PLAINTIFF SAN FRANCISCO TECHNOLOGY, INC.**

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4 I declare that I am a member of the State Bar of California and permitted to practice  
5 before this Court at whose direction the service was made and declare under penalty of perjury  
6 under the laws of the State of California that the foregoing is true and correct.

7 Executed on March 15, 2011 at Boston, Massachusetts.

8 /s/ Gerald. B. Hrycyszyn

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